1. *Mangum v. Mangum*, No. E2021-00285-COA-R3-CV, 2022 WL 16728237 (Tenn. Ct. App. Nov. 7, 2022).

Issue: Child custody and property division – classification, valuation and division.

2nd appeal. Remanded for factual findings. Husband and Wife were married for six-years and both parents were professionals that worked full-time. The couple has two young sons,ages 4 and 6. Trial Court's order indicates that the custody factors in TCA 36-6-106 were considered when the parties announced their agreement in court. On remand, COA held that the trial court considered each statutory factor and made findings related to best interests. Also at issue in this appeal was the trial court's division of property. Property division begins with identification and classification of all property. Generally, unless proven otherwise, property acquired during the marriage is presumed marital and property acquired before the marriage is presumed separate. Burden is on the party seeking to have property acquired during the marriage deemed separate to prove. Once identified and classified, then the trial court should value. Finally, the trial court will divide the marital property considering the factors in TCA 36-4-121(c). Here, the trial court carefully considered those factors. Marital property was divided "probably as much as 60/40". COA corrected a mathematical error – oral ruling and written order differed.

2. *Forrest v. Kunnu*, No. M2021-01458-COA-R3-JV, 2022 WL 16739238 (Tenn. Ct. App. Nov. 7, 2022). (*Rule 10 Memorandum Opinion)

Issue: Child support

The trial court ordered Father to provide opposing counsel with documentation reflecting his earnings and that support would be calculated accordingly. The record does not contain a subsequent order setting the amount of child support. This Court determined the judgement appealed was not final.

3. *Gaby v. Gaby*, No. E2022-00217-COA-R3-CV, 2022 WL 17065985 (Tenn. Ct. App. Nov. 17, 2022).

Issue: parenting time – maximizing time.

2nd appeal. 1st appeal affirmed material change of circumstances but vacated and remanded for findings of fact on best interest factors. The original PPP limited Father to 52 days per year due to lack of emotional attachment, anger management, and unusual work schedule which made it difficult for him to spend time with the children. Father filed to modify, requesting equal parenting time. The parties agreed to a material change of circumstances. The Trial Court only explained that the best interest factors remained the same from the prior hearing and increased Father's time to 90 days. On remand, the trial court placed

great weight on the sibling relationship – one child had a strained relationship with Father which affected the younger child's relationship with Father. The older child aged out. Remanded to consider solely with regard to younger. COA noted that TCA 36-6-106 was amended to add a new factor on March 18, 2022.

4. *Colley v. Colley*, No. M2021-00731-COA-R3-CV, 2022 WL 17009222 (Tenn. Ct. App. Nov. 17, 2022).

   Issue: Email settlement, discovery orders, and award of attorney's fees to Wife

   Husband took a voluntary nonsuit of his post-divorce lawsuit to modify transitional alimony and enforce the MDA. Wife sought attorney fees after the dismissal pursuant to TCA 29-41-106 for abusive lawsuit; the parties MDA; and TCA 36-5-103(c). As for the award of attorney's fees to Wife, the trial court erred in awarding Wife attorney's fees because Wife failed to show an exception to the American Rule. The trial court denied Wife's claim for abusive lawsuit which provides no basis for an award of attorney's fees. Similarly, Husband's nonsuit terminated the action and left the parties as if no action had occurred, resulting in no "prevailing party" and no right to recover under the MDA or Tenn. Code Ann. § 36-5-103(c). Nonsuit is not equivalent to an adjudication on the merits. "Prevailing party" following a nonsuit is only for malicious prosecution cases. Also, good reminders on orders. A trial court only speaks through written orders not oral rulings. Oral rulings are at best interlocutory orders subject to revision at any time. COA does not review oral statements unless incorporated into a decree.

5. *Boren v. Wade*, No. W2020-01560-COA-R3-CV, 2022 WL 17072370 (Tenn. Ct. App. Nov. 18, 2022). (*Rule 10 Memorandum Opinion)

   Issue: PPP – suspension of Father's parenting time.

   Trial court suspended Father's parenting time. Opinion indicates numerous findings as to what occurred between the parties and the child's school. But these findings were not related to the best interest factors. COA cannot reach substantive issues in the case because the trial court failed to make findings concerning the child's best interest before suspending the Father's parenting time. COA held that the trial court failed to conduct a best interest analysis for the child. Vacated.

6. *Marcel v. Marcel*, No. M2021-00594-COA-R3-CV, 2022 WL 17335655 (Tenn. Ct. App. Nov. 30, 2022).

   Issue: Child support and alimony

   21-year marriage. Two children, only one a minor at the time of trial. Wife had numerous health issues – physical and mental. Wife was receiving social security

disability. Trial Court imputed income to Wife upon a holding that the proof was insufficient to establish total disability. Husband's income varied. Trial Court averaged Husband's income over four weeks. Wife appealed the finding of Husband's income for child support. Husband appealed the award of alimony *in futuro* of $1,500 per month. COA held that four weeks is not a reasonable period of time when the parent has regularly earned variable income throughout his or her career. Child support guidelines require a "reasonable period of time" to be considered. While not required, if possible figures for at least a year should be considered. There is a preference for long-term averaging. A finding that Wife was "totally disabled" was not required to award Wife alimony *in futuro*. Wife's health condition and limited employment opportunities were properly considered in determining the award of alimony *in futuro*. Based upon these findings, the award of alimony *in futuro* was appropriate over transitional or rehabilitative. But, because the award of child support was vacated, the COA also vacated the award of alimony. Child support decisions precede decisions about spousal support because the ability to pay may be directly and significantly affected by the child support order.

7. *Green v. Green*, No. E2022-01518-COA-T10B-CV, 2022 WL 17346229 (Tenn. Ct. App. Dec. 1, 2022).

   Issue: 10B recusal

   Mother observed Ms. Akers, the trial court judge's assistant, who was married to Father's father at one point (18 years prior), standing and sitting beside the trial court judge in August 2021. Mother filed a motion for recusal in October 2022 – over a year after the observation. Rule 10B requires the motion to recuse to be filed promptly after a party learns or reasonably should have learned of the facts establishing the basis for recusal. COA held that Court Mother waived any issue she might have raised with regard to Ms. Akers's conduct by failing to raise it promptly. Further, the circumstances of this case do not show facts that "provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting a judge's impartibility." COA explained that a judge should not recuse unless truly called for as there is just as much a duty not to recuse as there is to recuse when warranted.

8. *McCurry v. McCurry*, No. E2022-00635-COA-R3-CV, 2022 WL 17347387 (Tenn. Ct. App. Dec. 1, 2022).

   Issue: Civil contempt and child's primary residential parent

   Mother's Post-divorce petition for contempt and to modify the PRP. The parties have a lengthy history of litigation. Mother attempted to raise 25 issues on appeal. COA summarized as two- denial of contempt and denying petition to change PRP. At time of divorce, Father was named as the child's primary residential parent, and Mother was granted limited, supervised visitation due to testimony regarding her mental health. Mother's petition did not state whether

she was seeking civil or criminal contempt. Trial Court announced because the Petition did not specify, that he was treating the Petition as one for civil contempt. Trial Court held that if it was criminal, it would dismiss the petition for failure to comply with Tenn. R. Crim. P. 42(b)(1) (notice). COA affirmed findings that Father was not in contempt. With regard to the request to modify the PRP, the Trial Court found no material change of circumstances. The threshold question in a motion to modify custody is, "whether there has been a material change in circumstances since the entry of the existing parenting plan." These changes may include failures to adhere to the parenting plan. Father's relationship with his fiancé and removal of t child from pre-school placement do not constitute material changes in circumstances that are sufficient to warrant a modification in t child's primary residential parent.

9. *Self v. Dawn*, No. E2021-01130-COA-R3-CV, 2022 WL 17348893 (Tenn. Ct. App. Dec. 1, 2022).

   Issue: Grant of divorce, distribution of property, findings of Husband's income, award of attorney's fees as alimony *in solido* to Wife

   Husband and Wife were married for eighteen years with no children, and Husband alleges Wife collected disability but did not contribute to the general household expenses. Husband has waived his issues on appeal by failing to provide the Court with a sufficient trial record, and the appellate court is required to presume the record would have supported the action of the trial court. With the exception of his issue concerning the factual accuracy of the trial court's finding regarding the duration of the marriage, Husband has waived all other issues on appeal.

10. *Thomas v. Thomas*, 666 S.W.3d 456 (Tenn. Ct. App. 2022).

    Issue: Procedural.

    Divorce. Complicated Procedural History. The parties were declared divorced. Division of property referred to a special master. The Special Master ruled. Objections filed. Trial Court ruled on those objections. Wife filed a motion to reconsider, for new trial or to alter/amend. The original trial Court recused. The new trial judge held that he could not rule on the post judgement motions and that they were better for the Court of Appeals. COA held that Tenn. R. Civ. P. Rule 63 was applicable. Under Rule 63, the new judge must either certify familiarity with the record and determine that the proceedings may continue without prejudice to the parties or grant a new trial. The successor judge may not proceed in a case without making the requisite certifications. The successor judge failed to either certify familiarity with the record or order a new trial which is a clear error and violative of the trial court's obligations pursuant to Rule 63. Order vacated and remanded for compliance with Rule 63.

11. *State v. Barrom*, No. W2022-00085-COA-R3-JV, 2022 WL 17369012 (Tenn. Ct. App. Dec. 2, 2022).

    Issue: Whether the juvenile court had jurisdiction to modify child support after the child reached the age of majority.

    Mother and Father divorced and agreed upon a PPP concerning the two minor children that stated Father would pay Mother $400 monthly and that the amount would remain $400 per child until they reach 21 years of age. Trial court modified child support after the child reached the age of 18. The juvenile court lacks jurisdiction to modify child support after the child reaches the age of majority.

12. *Austermiller v. Austermiller*, No. M2022-01611-COA-T10B-CV, 2022 WL 17409921 (Tenn. Ct. App. Dec. 5, 2022).

    Issue: 10B recusal

    Husband moved for recusal after the presiding judge made comments regarding Husband's failed court-ordered drug test. COA believes a reasonable person would find the presiding judge's comments came from a desire to help Husband deal with his history of drug abuse rather than a desire to punish Husband. In the Order denying the recusal, the Trial Court held that the motion sought to delay the litigation and prevent the court from filing pending orders. COA clarified that when a Rule 10B motion is pending, the trial court may enter orders that are based upon rulings made from the bench before the recusal motion was filed.

13. *Burnett v. Burnett*, No. E2021-00900-COA-R3-CV, 2022 WL 17484311 (Tenn. Ct. App. Dec. 7, 2022).

    Issue: Classification and division of the parties' assets, alimony, and PPP and criminal contempt.

    Wife filed for divorce in 2018. Three minor children. Wife: 37 years old, stay-at-home mom during marriage, part time teacher, college degree, earned $1,592 per month. Wife worked from home teaching English online to Chinese students from 5am to 9 am and 9:30 pm to midnight so that she could homeschool. Husband: 36 years old, worked for USPS, high school diploma, earned $3722 per month. Trial court found both able to work. Husband received 38.7% of the net marital estate. Wife received 61.3% of the net marital estate. Property division was affirmed. Trial Court made detailed findings. Trial Court awarded Wife alimony *in solido* for attorney fees in the amount of $9,840 plus expenses of $1,640. COA: nothing in the statutory scheme requiring a court to penalize a parent for prioritizing the needs of the children in considering alimony need. With regard to parenting, the trial court made "extensive and detailed findings pertinent to each applicable factor. Trial Court found that Wife did the majority of the parental responsibilities. Father was virtually uninvolved with the younger

children. Father did not provide financially for the family. He returned the children dirty and injured, without explanation. Father took cocaine and drank excessively. He was verbally abusive,destroyed personal property and jumped from a moving car. COA affirmed findings of 90 days for the Father, but vacated because schedule ordered (63 days) did not amount to 90 days. Wife conceded the inconsistency. Trial Court found Father guilty of one count of criminal contempt. During a break Father was overheard by a court officer discussing the proof with a witness in violation of the rule of sequestration. Father denied doing this. Wife conceded the criminal contempt was improper.

14. *L.A.S. v. C.W.H.*, No E2021-00504-COA-R3-JV, 2022 WL 17480100 (Tenn. Ct. App. Dec. 7, 2022).

Issue: Custody dispute (petition to modify PPP and contempt)

Mother's Petition to modify the PPP and for contempt. Mother lives in Nevada while the two minor children live in Tennessee with Father. Mother and Father were never married and have disputed over custody of the Children since 2013. Prior findings that Mother worked as a prostitute in Nevada and deceived Father as to the whereabouts of the children. The parties continued to have great difficulty co-parenting. Both married and had additional children. To modify, the threshold question is whether there has been a material change of circumstances. Although there is no bright-line rule, whether a material change in circumstances has occurred involves several non-exhaustive factors: "(1) whether the change occurred after the entry of the order sought to be modified; (2) whether the change was not known or reasonably anticipated when the order was entered; and (3) whether the change is one that affects the child's well-being in a meaningful way." If a material change of circumstances is established, the petitioning party must then demonstrate that the requested change is in the child's best interests. Changing the residential schedule is a different standard and lower threshold. COA is reluctant to modify the initial custody determinations unless it is clear that modification is necessary. Of note, one of Mother's arguments was that the stepmother was providing a notable amount of parenting due to Father's work schedule. COA held that this does not in and of itself necessitate a change of the PRP. Affirmed no material change of circumstance.

15. *Chase v. Chase*, 670 S.W.3d 280 (Tenn. Ct. App. 2022).

Issues: Alimony and valuation of marital property.

Twenty-four-year marriage. Husband: plastic surgeon, 56 years old, earned between $592,000 and $1 million a year. Wife: 52 years old, licensed pharmacist but had been a stay-at-home mother for many years, wanted to go to art school, back issues, found to earn $30,000 a year. Trial Court valued and divided the marital property. Awarded Wife $7,000 a month alimony *in futuro* and $1,600 a

month rehabilitative alimony for 3 years. Husband argued that the trial court erred by awarding the amount of alimony to Wife by failing to acknowledge the assets awarded to her and consider her earning capacity. Specifically, Husband argued that because Wife received $1.9 Million in marital assets, the trial court should have considered the income from those rather than only considering Her earning capacity. Also, Husband argued the trial court should have considered Wife's ability to work as a pharmacist. Wife's decision to not seek employment outside the field of pharmacy was reasonable. Wife did not possess immediately marketable job skills and suffered from medical conditions that limited her ability to perform jobs that she had experience, although not recent experience. In affirming the award, the COA also considered that Wife did not receive a sizeable award of liquid assets and would have to purchase a new residence. Trial Court also credited Wife's expert who testified as to no significant income from the assets she received. The COA affirmed combination of rehabilitative alimony and *in futuro*. Rehabilitated would assist the disadvantaged spouse in obtaining additional education, job skills or training as a way of becoming more self-sufficient. Transitional alimony was not appropriate because rehabilitation was necessary in order to improve Wife's self-sufficiency. Husband also appeals the valuation of his medical practice. Professional goodwill is an intangible asset that is not divisible as marital property upon divorce because it is personal to the proprietor. Enterprise or business good will is separate from personal goodwill, but the Court has been reluctant to allow enterprise goodwill to be divided as a marital asset upon divorce when the business involved is a sole proprietorship. Medical clinic was not required to be valued only using the net asset approach. COA approved some inclusion of enterprise goodwill due to the nature of the business. COA will affirm as long as the value assigned was within the range of values proven by evidence.

16. *Miles v. Miles*, No. W2021-01356-COA-R3-CV, 2022 WL 17658299 (Tenn. Ct. App. Dec. 14, 2022). (*Rule 10 Memorandum Opinion)

    Issue: Custody (competing petitions to modify the existing PPP)

    Long standing, highly contentious custody matter. Child has a strained relationship with Father which includes allegations of physical, emotional, and verbal abuse and the child's intense fear and anxiety surrounding Father. Record makes it clear that Father has a "terrible" relationship with The child and has had minimal contact with the child since 2018. Affirmed trial court's best interest findings.

17. *In Re Aiden*, No. W2021-01187-COA-R3-JV, 2022 WL 17684082 (Tenn. Ct. App. Dec. 15, 2022).

    Issue: Custody

    Mother and Father were never married but continued in a relationship for ten years and had four children; the custody of only one child is the subject of the

appeal. Mother was the primary residential parent from August 2015 until September 2017 when the parties agreed privately that Father would assume custody of all four children until Mother obtained stable housing; Father petitioned to be named as the child's primary residential parent in November 2019. Trial Court found a material change of circumstances of (1) Mother's arrest; (2) Mother misleading Father regarding paternity; and (3) Mother's emotional distress to the children. Mother did not challenge this finding on appeal, but only the best interest findings. TCA 36-6-106(a)(13) requires the Trial Court to consider the reasonable preference of a child 12 or older. The trial court made clear findings as to why it excluded the child's testimony. The trial court found that the child was in counseling, would be traumatized and that the GAL advocated against the child testifying. Accordingly, the trial court found the child's preference not applicable. COA held that the trial court had sound reasons for not hearing from the child and affirmed. COA assumed sufficient facts to support the trial court's decision because there was no transcript or statement of the evidence. COA goes on to explain that even if it assumed the child's preference was to live with Mother, the factual findings still support the trial court's order.

18. *Bean v. Bean*, No. M2022-00394-COA-R3-CV, 2022 WL 17830533 (Tenn. Ct. App. Dec. 21, 2022).

    Issue: Equal parenting time

    Mother appeals the Trial Court's decision to award equal parenting time after making no findings regarding her allegations of abuse. Trial court heard from both parents and then ordered drug screens of both. Trial court told the parties that it did not need to hear from other witnesses. They both had other witnesses. Trial court ended the proceeding by stating that a schedule would be set once the drug screens were returned. Both drug screens were negative. Mother filed a motion for further findings of fact or to re-open proof, arguing to limit Father's parenting time pursuant to TCA 36-6-406 due to abuse. Trial court issued a final decree and found no evidence of physical or emotional abuse to the child or other parent. At the hearing on Mother's motion, both parties outlined evidence in the record of Father's mental health and drug use, mutual allegations of abuse and work schedules. Trial court granted the motion to re-open proof. A final order was entered. It did not contain any additional findings relative to the allegations of abuse by either party. Findings of fact must include as much of the subsidiary facts as is necessary to disclose to the reviewing court the steps by which the trial court reached its conclusion on the factual issue. COA found the record replete with evidence of abuse but no findings of abuse. If the trial court had found that the testimony was not credible or that the violence did not require any limitations of either party's parenting time, it should have expressed that in the record. Trial Court was required to resolve the dispute as to whether the abuse occurred, and if so, who perpetuated it. The trial court must include enough facts as to how it reached that conclusion. If the trial court finds abuse, the trial court should consider the mandatory limitation on parenting time in TCA 36-6-406.

19. *Cooke v. Cooke*, No. E2022-00049-COA-R3-CV, 2022 WL 17952651 (Tenn. Ct. App. Dec. 27, 2022).

    Issue: Classification, valuation and division of marital property, alimony

    Divorce. Trial court entered an amended Final Decree. Original award provided Husband with 60% of the proceeds from the marital residence. In the amended FDD, Husband received 70%. Also, the original award provided Husband with 60% of the marital portion of an annuity and his bank account. The amended award provided him with 70% of these assets. Wife contended that she contributed to the appreciation of Husband's annuity (roll over from a 401K) and therefore the entire appreciation was marital. TCA 36-4-121(b)(2)(B)(iii) requires trial courts to utilize any reasonable method of accounting to attribute post-marital appreciation to the value of the premarital benefits and should characterize the premarital value of an employment-related benefit together with the appreciation as separate property. If contributions were made during the marriage, the appreciation to those contributions would be marital. Trial court's classification affirmed. However, when the trial court amended its final decree, it did not provide explanation for the change to the percentage. This was a short term marriage. When a marriage is short, the significance and value of a spouse's non-monetary contributions is diminished, and claims by one spouse to another spouse's separate property are minimal at best. The parties should be restored to their premarital financial condition as much as possible. Sometimes, however, this is not possible, and the court may consider other property factors in determining an appropriate division. Because the change to the division was not explained, the COA vacated and remanded the property division. Because the property division was vacated, the award of alimony and attorney fees was also vacated.

20. *Webb v. Webb*, No. W2021-01227-COA-R3-CV, 2023 WL 568331 (Tenn. Ct. App. Jan. 27, 2023).

    Issue: Division of marital property and award of attorney fees

    Wife, 55, and Husband, 71, were married for four years and all Wife's earnings were deposited into Husband's rental property account. At the time of marriage, Husband had around $270,000 in separate assets; Wife had $80,000. The principal marital asset was the marital residence. The trial court awarded Wife approximately 13%. Husband contributed roughly $170,000 to the marital residence; Wife contributed $30,000. Husband's brother contributed $40,000 in labor and materials, but was only paid $12,000. Husband also contributed $30,000 into an ill-fated business of Wife's. Husband's net worth was three times Wife's at the time of marriage. Wife had a higher earning capacity than Husband. In a short-term marriage, each spouse's contribution to the accumulation of assets is an important factor. In dividing the marital equity, the trial court focused on the factors of a short-term marriage. In light of the trial

court's consideration of such factors, the court did not err in dividing the marital estate.

21. *Grider v. Grider*, No. M2022-00213-COA-R3-CV, 2023 WL 1098473 (Tenn. Ct. App. Jan. 30, 2023).

    Issue: classification and division of marital property; award of attorney fees for order of protection.

    The trial court found that Husband's purposeful delay of the case and actions before and during the pendency of the divorce constitutes inappropriate marital conduct which entitles Wife to be awarded a divorce. Trial court awarded Wife marital assets worth $151,587.64 and Husband marital assets in the amount of $2,000. Wife was ordered to pay debts in the amount of $68,63.30, which included her one-half of attorney fees. Husband was not assessed any marital debt, but was ordered to pay one-half of Wife's attorney fees related to the order of protection. Husband inherited funds from his father. He deposited those in a joint account. Wife enjoyed equal access to that account and regularly made withdrawals to purchase and maintain properties in Alabama. She also used the account to pay marital bills. Therefore, a rebuttable presumption arose that Husband gifted those funds to the marital estate. Further, real property purchased with those funds from the joint account were marital. Trial court failed to assign values to all of the assets though. Even if you allow a party to maintain an asset, the trial court should assign a value. Retirement accounts should be valued. Without values, the COA cannot determine if the overall division is equitable. TCA 36-3-617(a)(1) allows the trial court to award attorney fees to the victim of domestic abuse for the costs of seeking and enforcing an order of protection.

22. *Macomber v. Macomber*, No M2021-01503-COA-R3-CV, 2023 WL 1100318 (Tenn. Ct. App. Jan. 30, 2023).

    Issue: PPP and child support

    Father filed a petition to modify PPP and child support. Following the divorce, the parties generally followed the PPP. The children lived primarily with Mother during the school year and with Father during the summer. During the school year, Father had daily time with the children from after school until Mother ended her workday. Then school shut down due to COVID-19 and Mother lost her job. Mother quit allowing the daily visits. Father filed a petition to modify requesting equal parenting time. Modification of residential parenting schedule is a "much lower" threshold than modification of the PRP. Mother's change in work schedule resulted in Father's loss of daily parenting time. This significantly impacted parenting. COA held that this was a material change of circumstances and remanded for best interest determination. Father also sought a child support modification. Child support modification requires a significant variance of at least 15% between the current obligation and the proposed support obligation.

Whether a significant variance exists should be determined from the child support obligation, without any deviation. Here the parties had agreed to an upward deviation. When determining whether a significant variance existed, the trial court considered the original child support amount before any deviation. This was correct.

23. *Thompson v. Thompson*, No. E2022-00345-COA-R3-CV, 2023 WL 1099255 (Tenn. Ct. App. Jan. 30, 2023).

    Issue: Interstate custody matter

    Interstate custody matter. Mother moved from Tennessee to Massachusetts with the child after she separated from Father; Father was aware of the relocation but did not object to it. The parties agreed that Father would have the child for two months during the summer from June 25, 2021, until August 24, 2021. On August 9, 2021 Mother received an email from Father stating that he had enrolled the child in school in Tennessee. On August 23, 2021, Mother filed an ex parte petition in Massachusetts for immediate return of the child. On August 24, 2021, Father filed a petition for emergency temporary custody in TN, alleging neglect and mistreatment of the child by Mother. On August 27, 2021, the Massachusetts court entered an order directing Father to return the child. Father complied and the child returned to Massachusetts. Temporary emergency jurisdiction under TCA 36-6-219(a) allows a court to exercise temporary emergency jurisdiction if the child is present in this state. Therefore, because the child was no longer in Tennessee, the court did not have temporary emergency jurisdiction.

24. *Buntin v. Buntin*, No. E2022-00017-COA-R3-CV, 2023 WL 2232082 (Tenn. Ct. App. Feb. 27, 2023).

    Issue: Child support, alimony, and division of marital assets

    Divorce. Twenty-one-year marriage. Husband averaged $389,000 per year. Wife earned $1,432 per month and was pursuing a Ph.D. Wife had health issues as she was a cancer survivor and required routine expensive medical scans. The parties received about equal division of the net assets. The presumptive amount of child support was $2,700 per month but the trial court deviated to $0 per month after ordering Father to pay private school tuition at $42,000 a year. Trial court ordered transitional alimony in the amount of $6,000 per month plus health insurance premium for two years after Wife completed her Ph.D., or 7 years, whichever was shorter. Father contended that the trial court erred in the downward deviation of child support. In ordering a deviation, the trial court should make written findings as to the reason for the deviation, the amount that would have been required under the guidelines, how the application of the guidelines would be unjust or inappropriate and how the best interests of the child will be served by the deviation. Child support deviation was affirmed. In determining Mother's need, the trial court averaged her income over the last 4 years. The Court can consider expenses a parent may incur relative to *minor*

children when determining the need for spousal support. Awards of transitional alimony of seven to eight years are not unusual if circumstances support. Finally, it was not error to award Wife attorney fees even though she received more than $500,000 in assets. Most of Wife's assets are not liquid and there was significant earning disparity.

25. *Perkins v. Perkins*, No. W2021-01246-COA-R3-CV, 2023 WL 2446807 (Tenn. Ct. App. Mar. 10, 2023).

    Issue: Alimony and property division – marital debt.

    Parties married in 1987. Wife: 57 years old, college graduate, had not worked since 1993, several health issues. Husband: 60 years old, master's degree, retired Colonel in the army, earned $257,000 a year plus bonus, $6,000 a month in military retirement and $1,500 a month in military disability. Trial court awarded Wife a little over 50% of the marital assets, but most of the debt. Net result was about 48% of the net marital estate. Trial court awarded Wife $4,000 a month alimony *in futuro* and then $750 thereafter. When allocating marital debts, the court should consider: (1) the debt's purpose; (2) which party incurred the debt; (3) which party benefitted from the debt; and (4) which party is best able to repay. Most of the debts were incurred after separation by Wife and were debts to Wife's family. Most of the debts were litigation costs. The trial court found only certain of Wife's litigation expenses were reasonable and decided to make her solely responsible for the balance of these expenses. Further, while an "essentially equal division" may be appropriate when there is a long marriage, it does not require mathematical equality. COA also agreed with the appropriateness of long-term alimony. Wife sought more alimony based upon a suggested move to Shelby County. Alimony must be based on facts known at the hearing, and questions reaching far into the future are best left to future determination. Trial court did not explain the reduction in the alimony after 53 months. Husband admitted on appeal he could not explain the reduction. The COA modified the award to eliminate the reduction, but clarified all alimony *in futuro* awards are subject to modification.

26. *Waddell v. Waddell*, No. W2020-00220-COA-R3-CV, 2023 WL 2485667 (Tenn. Ct. App. Mar. 14, 2023).

    Issue: Trial Proceedings, Credibility Findings

    This is a highly contentious divorce case with a highly complicated procedural background that addresses several pre-trial and procedural issues, along with issues concerning credibility findings for purposes of child custody and support.

    Wife joined Husband trusts and businesses to the divorce, asserting the entities held assets that were marital. At the trial court, the court initially denied the entities' motions to dismiss, and the entities subsequently filed motions to revise judgment. The Court then granted the motions to revise and dismissed all of the

claims against all of the entities except DSW Trust #2 by "lack of opposition" by Wife's counsel. Subsequently, the court dismissed the claims against DSW Trust #2 as well. On appeal, Wife argued that the Court used the wrong standard in addressing a motion to revise under Rule 54.02 and that it should have been analyzed under the standard articulated in Rule 59.04 motions to alter or amend. In rejecting Wife's argument, the Court noted that under Rule 54.02, courts have the discretion to revisit any interlocutory orders before the entry of a final judgment. The court went on to state that *Harris v. Chern*, the case cited by Wife, did not rule that a motion to revisit under Rule 54.02 should be analyzed under the framework for a Rule 59.04 motion to alter or amend, nor did *Harris* hold that a trial court may grant a motion to revise only when one of three elements stated in *Harris* applies.

In addition to procedural issues, the Court also addressed credibility concerns in the context of child custody and support. While credibility findings are typically given deference at the appellate level, the Court of Appeals found that the trial court had not made proper credibility findings based on evidence. The Court of Appeals noted that given a lack of testimony or evidence regarding issues with Wife's phone, as well as Wife's alleged illness, the trial court abused its discretion when it relied on the statements of parties' counsel to issue credibility findings.

27. *Creger v. Creger*, No. M2022-00558-COA-R3-CV, 2023 WL 2533213 (Tenn. Ct. App. Mar. 16, 2023).

Issue: Distribution of property and parenting time

Divorce case. Trial court divided the assets and debts, named Mother as the PRP and awarded Father 55 days of parenting. Father failed to include a chart displaying the property values in his brief which constitutes waiver of his issue presented concerning the marital property distribution. The trial court did not abuse its discretion in deciding the parties' co-parenting time as the evidence demonstrated that Mother had been the Children's primary caregiver while Father was disengaged and inattentive. Two counselors testified that Father was harmful to the mental health of the children. Parenting schedule affirmed. The trial court also issued evidentiary sanctions. Local rule 12.02 of the 16th Judicial District requires: 8 days before trial, the parties must file a statement of compliance with Rule 12.02 in the form of Appendix H; they must attach proof of income; must list all assets and debts with values. Such statements shall be signed under oath and are considered testimony. Witness and Exhibit lists shall also be filed in accordance with Local Rule 3.01. Father failed to file these documents until late the afternoon before trial. Father's witness and exhibit list were never filed. Father was allowed to testify but prohibited from calling any additional witnesses or presenting evidence. In determining the appropriate sanction for failing to name a witness, the trial court should consider: the explanation for the failure, the importance of the testimony of the witness, the

need for time to prepare to meet the testimony and the possibility of a continuance. Father failed to make an offer of proof and therefore, the COA could not determine it was an error. Deemed frivolous appeal.

28. *McCurry v. McCurry*, No. E2023-00297-COA-T10B-CV, 2023 WL 2591161 (Tenn. Ct. App. Mar. 22, 2023).

    Issue: 10B recusal

    Recusal appeal. In support of the appeal, Petitioner submitted a flash drive, which allegedly contains a recording of the proceedings held in the trial court. The trial court in its order noted that the Petitioner was using her cell phone to surreptitiously record the proceedings. The flashdrive was not admitted into evidence or approved by the trial court. Nor does it qualify as a properly authenticated transcript. Accordingly, it would be improper for the COA to consider.

29. *Stooksbury v. Varney*, No. E2021-01449-COA-R3-JV, 2023 WL 2642616 (Tenn. Ct. App. Mar. 27, 2023).

    Issue: Child support and contempt

    Appeal relates to Father's continued failure to pay child support. Mother filed contempt petitions. The record contains a dispute about where the petition was filed. Judge for Union County was sitting by interchange in Knox County. Due to some clerical errors, the wrong style was placed on an order indicating it was in Union County. Trial court attempted to correct. Father filed a Rule 60 motion for relief as Union County did not have jurisdiction. He appealed. In the meantime, another contempt petition was filed. Another judge from Granger County heard by interchange. Continued issue with the style on pleadings. COA held it was not filed in the wrong county based upon the record and explained the judges sitting by interchange have subject matter jurisdiction. Father's total child support arrearage had reached $85,521.15 by March 2021. Trial court ordered Father to pay $1,000 a month towards the arrearage. Father argues that it is an abuse of discretion because it violated the 50% ceiling set in Tenn. Code Ann. § 36-5-501(a)(1). COA held that he waived this issue. In a footnote, the COA explained that even if it was not waived, §501(a)(1) does not apply in this case because the trial court was not issuing a wage assignment or garnishment. Further, the COA affirmed the reasonableness of the payment finding that the trial court carefully balanced Father's ability to pay his substantial arrearage against the obligation that it be paid within a reasonable time. The trial court found that it would take "several years to pay just to get even" and noted that Father has assets that could be liquidated to pay. Held to be a frivolous appeal to delay payment further.

30. *Prichard v. Prichard*, No. W2022-00728-COA-R3-CV, 2023 WL 2726776 (Tenn. Ct. App. Mar. 31, 2023).

    Issue: Classification and Division of property and credit of use of separate funds to purchase marital residence

    The parties married in 2006 and divorce filed in 2020. One child. Husband worked full time and had investment properties. Wife had a bachelor's degree in medical technology and worked in laboratories during most of the marriage. She was laid off and transitioned to a teacher's assistant. Parties agreed on the division of some property but not to the values. Husband contends the marital residence was his separate property because he purchased it with funds from his checking out shortly after the marriage. There is a rebuttable presumption that the marital residence was marital property because it was purchased during the marriage. The presumption may be rebutted by evidence of circumstances or communications clearly indicating an intent that the property remains separate. Burden of proof is on the party seeking to rebut the presumption. The only evidence that the funds used to purchase the property came from separate funds was Husband's testimony. The trial court found Husband not to be credible. Classification affirmed. Of the net estate Wife received 59.5% and Husband received 40.5%. The value placed on marital property should be as near as possible to reflect the value on the date it is divided. Wife testified at trial that her checking account had a value of $6,800. Even though both parties' pre-trial submissions reflected $2,000, trial court should have valued it at $6,800. However, the net effect is minimal as it results in a division of 59.8/40.2% and therefore, harmless. Higher education does not necessarily equate to higher earning capacity.

31. *Dessie X v. Idris X*, No. W2021-01155-COA-R3-CV, 2023 WL 2804672 (Tenn. Ct. App. Apr. 6, 2023). (*Rule 10 Memorandum Opinion)

    Issue: Classification, valuation, and division of property

    Approximately 10-year marriage. Wife's 5th marriage. Husband's second marriage. Wife owned a daycare and related property business. Husband owned a property management company. During the divorce a friend of Wife's quitclaimed 30 properties to her daycare property business. Wife's friend transferred the properties to her because he had to leave town because of "some illegal activity…and the police and stuff got involved." The properties were valued at $577,000. He testified he wanted the property back when he returned to Memphis. Trial court found that Wife rebutted the presumption of marital property and Husband failed to rebut the contention that the arrangement was just an accommodation for a friend. Trial court failed to assign a value to one piece of marital property. But the COA held that even if you considered

Husband's value, the property still has a negative equity value. Therefore, any error was not reversible. Division of the marital estate was also upheld.

32. *In Re McKayla H.*, No. W2020-01528-COA-R3-JV, 2023 WL 2809507 (Tenn. Ct. App. Apr. 6, 2023).

Issue: Relocation of child (Custody)

Father, a NFL player, and Mother had one child and were never married. Child born 2008. Mother lived in Virginia. Father lived in Knoxville and played football for UT. Mother moved back to Knoxville. Father signed with the NFL. In 2013, Mother moved to Memphis. In 2015, Father bought a home in Fayette County, but did not fully relocate to the Memphis area until he retired in 2018. In 2019, Mother sought to relocate to Virginia. At that time, Father had 165 days a year of parenting time. In 2018, the relocation statute – TCA 36-6-108 was amended. The amendment removed the inquiry into substantially equal and reasonable purpose. The amendment restores a significant amount of discretion to the trial court and does not contain a presumption for or against relocation. The trial court must determine if relocation is in the best interest of the child considering the factors in TCA 36-6-108(c)(2). These include: (1) the nature, quality, extent of involvement and duration of the child's relationship with the parent proposing to relocation and with the non-relocating parent, siblings and other significant persons in the child's life; (2) the age, developmental stage, needs of the child, and likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child; (3) the feasibility of preserving the relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties; (4) the child's preference if the child is 12 years or older. The court may consider the preference of a younger child upon request; (5) whether relocation will enhance the general quality of life for both the relocating parent and the child, including, but not limited to, financial or emotional benefit or education opportunity; (6) the reasons for each parent seeking or opposing the relocation; (7) any other factor affecting the best interest of the child including those factors in TCA 36-6-106(a). Trial court made detailed findings, including that Mother had been the primary parent throughout most of the child's life, Mother had primarily taken responsibility for educational issues and Mother more likely to encourage a relationship with Father than vice versa. COA affirmed the order permitting relocation. Trial court also ordered Father to bear 100% of travel costs. TCA 36-6-108 requires the trial court to assess travel costs for visitation. Trial court did not make findings to support its order, but the COA affirmed after "soldiering on" to review the record. Vastly different financial resources. Father did not work and testified he would not have to work for the rest of his life. Mother earned $175,000 a year. Also, affirmed trial court's order for Father to pay 100% of GAL fees as the trial court explained he would have awarded Mother her attorney fees, but instead ordered Father to pay all of the GAL fees. This was also affirmed, and Mother awarded her fees on appeal.

33. *Sanko v. Sanko*, No. E2022-00742-COA-R3-CV, 2023 WL 2808312 (Tenn. Ct. App. Apr. 6, 2023).

    Issue: Custody modification and relocation

    2nd appeal. Prior appeal reversed the trial court on a finding of no reasonable purpose for relocation and remanded. No new parenting plan was entered following remand. Mother moved to Pennsylvania with the children. Father filed a Petition to Modify and the trial court found Mother's move to be a material change of circumstances. COA held that Mother's relocation could not be a material change of circumstances because it was condoned by the Court of Appeals in the last appeal. Remanded to address other allegations of material change of circumstances.

34. *Patteson v. Patteson*, No. W2022-01187-COA-R3-CV, 2023 WL 2983110 (Tenn. Ct. App. Apr. 18, 2023).

    Issue: Alimony and contempt

    MDA provided that Husband shall pay to Wife $1,800 a month until the mortgage is paid in full. If the Wife sells the house, then the amount of alimony is set at the payoff of the mortgage and continues at $1,800 until the payoff amount is paid in full. MDA did not specify the type of alimony. Husband contended it was alimony *in futuro* and that Wife had remarried, terminating the alimony. Wife filed for contempt. Both alimony *in solido* and alimony *in futuro* are periodic payments. This is not conclusive of the type of alimony. Whether it is alimony *in solido* or alimony *in futuro* is determined by the definiteness or indefiniteness of the sum ordered. If it contains contingencies that affect the total amount to be paid, the award is *in futuro*. COA held the amount is ascertainable and therefore, trial court correctly classified as *in solido*.

35. *Boren v. Wade*, No. W2022-00194-COA-R3-CV, 2023 WL 300081 (Tenn. Ct. App. Apr. 19, 2023).

    Issue: criminal contempt

    Post divorce contempt case. The order alleged to have been violated must be clear, specific, and unambiguous. The court cannot go beyond the four corners of the order in contempt cases to clarify the ambiguity. The must expressly and precisely spell out the details of compliance in a way that will enable reasonable persons to know exactly what actions are required or forbidden. Orders alleged to have been violated should be construed using an objective standard that takes into account both the language of the order and the circumstances surrounding the issuance of the order, including the audience to whom the order is addressed. Father was prohibited from communicating with the child's school or the

Catholic Dioceses "concerning the minor child." Father posted on Facebook a post that in sum accused the Superintendent by name of covering up child abuse. Superintendent was also the principal at the child's school. Trial Court held Father in criminal contempt. COA explained that the post did not "concern the child" and therefore, could not be contempt. COA did hold that the post indicated a lack of good faith by Father to follow the trial court's orders and used this basis to deny Father attorney fees even though he was the prevailing party under TCA 36-5-103(c).

36. *Pogue v. Simms*, No. M2022-01095-COA-R3-JV, 2023 WL 3000851 (Tenn. Ct. App. Apr. 19, 2023).

Issue: Custody Order

Paternity action. Custody order in dispute. Trial court named Mother the primary residential parent and awarded Father less than equal parenting time (229/136). Father appeals, arguing that the trial court failed to maximize his parenting time which is required by Tenn. Code Ann. § 36-106(a). Mother and Father agreed on many things and acted respectfully toward each other. Both parents agreed that the other was an excellent parent to the child, that they each play an active role and that they co-parent effectively. COA is unable to discern the trial court's decision due to its failure to include any findings of fact or conclusions of law in its order. The Order did not contain any findings of fact pursuant to Rule 52.01. Stating the decision without more does not fulfill this requirement.

37. *Barrett v. Killings*, No. M2022-00946-COA-R3-JV, 2023 WL 3055535 (Tenn. Ct. App. Apr. 24, 2023).

Issue: Relocation

Mother relocated less than fifty radial miles but more than fifty driving miles from Father. The proper measurement under Tennessee's parental relocation statute is radial-miles, otherwise known as the straight-line method. The trial court's findings under the parental relocation statute are a nullity because Mother moved less than fifty radial-miles away. The opinion did not preclude Father from asserting a material change of circumstances addressing the impact of the move.

38. *Bannor v. Bannor*, No. E2022-00507-COA-R3-CV, 2023 WL 3071341 (Tenn. Ct. App. Apr. 25, 2023).

Issue: Division of martial property and alimony

Husband, a doctor, and Wife were married in Ghana and had three children. At trial, evidence established the parties had significant ties to Ghana and owned several properties there. Local Rule required a witness list to be filed 10 business days before trial. Trial court excluded a rebuttal witness because the witness was not timely disclosed under the Local Rule. COA could not determine if this witness would affect the outcome because there was no offer of proof. Husband contended that the trial court erred in awarding Wife the majority of the marital assets and assigning all of the marital debt to him. When allocating debt, the trial court should consider the following factors: (1) the debt's purpose; (2) which party incurred the debt; (3) which party benefitted from the debt; (4) which party is best able to repay the debt. The Court's ultimate allocation of the debt is not an issue. But, because the trial court did not assign values to the debt, the COA could not consider the division of marital property. Trial court failed to value much of the property or debt, or make any findings regarding separate property. Therefore, property division vacated. Because the property division was vacated so was the alimony.

39. *Lee v. Boyett*, No. M2022-00060-COA-R3-CV, 2023 WL 315090 (Tenn. Ct. App. Apr. 28, 2023).

Issue: Father appealed order requiring children to receive Covid-10 vaccine

While Father's appeal was pending, both children received the vaccine, rendering this appeal moot. Because both children have received the vaccine, any ruling by this Court would have no effect.

40. *Taylor v. Taylor*, No. M2022-00140-COA-R3-CV, 2023 WL 3193200 (Tenn. Ct. App. May 2, 2023).

Issue: Division of marital assets, valuation of assets, and award of parenting time

Divorce. Trial Court divided the marital estate nearly equally. Mother was named the PRP and Father was granted 130 days of parenting. The net value of each party's share of the marital estate was $324,642.24 (51.6%) to Mother and $304,292.24 (48.4%) to Father. Father had a "secret day trading account" that he did not disclose in discovery. Trial court divided it 50/50. Father argues that the trial court should have only considered him to own 50% of his day trading account because his girlfriend owned the other 50%. There was no error in classifying this account as marital property and dividing it evenly between the parties. Father also raised issues with the valuation of a Jeep and a ring from his grandmother. The Jeep was awarded to Father and COA held no error in valuation. The trial court held the diamond in the ring to be a gift to Wife and her separate property but the setting to be marital and divided it 50/50. Parenting plan was also affirmed. Trial court made detailed findings on the statutory best interest factors.

41. *Goughenour v. Goughenour*, No. M2022-00297-COA-R3-CV, 2023 WL 3269661 (Tenn. Ct. App. May 5, 2023).

Issue: Award of parenting time and parental restrictions

Father was named the primary residential parent and was awarded equal parenting time with Mother; also, the trial court ordered that neither parent consume alcohol in the presence of Child. Mother had an alcohol addiction and Mother was ordered to undergo a forensic alcohol assessment. Two assessments were performed. Father argued that the trial court erred in considering an assessment that was not submitted into evidence but attached to a motion. COA held that trial court's decision must be grounded in the evidence and not based on something other than evidence. Trial court should not have considered the report. But, the COA found that the report did not "more probably than not affect the judgment" and therefore, held it was harmless error. Father also contended that the trial court erred in not considering the limiting factors in TCA 36-6-406(d). COA held that this was not raised by Father. COA explained there is no requirement for the trial court to consider TCA 36-6-406(d) *sua sponte*. Also, Father contended that the trial court erred by limiting his alcohol consumption. Essentially he argued that he was not the one with the alcohol problem and should not be limited. COA found that there was evidence that Father had yelled at a child while intoxicated and that he bought alcohol for Mother while advocating that she had a problem. The restrictions on both parents were affirmed. Finally, Father argued that 50/50 parenting was an error. The trial court went through each of the best interest factors and made written findings. COA explained that the General Assembly has established an aspirational goal for the courts to maximize each parent's participation in the life of the child. "Child custody litigation is not a sporting event that can be determined by simply tallying up wins and losses." The best interest determination does not call for a rote examination of each and every factor and then a determination of whether the sum of the factors tips in favor of or against the parents. A best interest analysis could turn on a single factor.

42. *Justice v. Hanaway*, No. E2022-00447-COA-R3-CV, 2023 WL 3451544 (Tenn. Ct. App. May 15, 2023)

Healthcare liability case. Mother sued the Psychologist who provided family counseling and therapy to the minor child. The Psychologist argued that the lawsuit should be dismissed under a theory of judicial immunity. Held it was abundantly clear that the Psychologist was providing therapy pursuant to a court order. He was ordered to conduct therapy, testify, and to assist the court in the evaluation and assessment of a family in a domestic dispute. Because he was providing this pursuant to a court order and acting on behalf of the court, he was entitled to judicial immunity. What does this mean in domestic law? Privileges?

43. *Pratt v. Pratt*, No. W2021-01333-COA-R3-CV, 2023 WL 3614770 (Tenn. Ct. App. May 24, 2023).

Issue: Interpretation of a provision in the marital dissolution agreement regarding college expenses.

Post divorce matter concerning a college tuition provision in the MDA. Mother filed for contempt. Father filed a declaratory judgment action seeking a finding that he had met his obligations. In 2017, the son enrolled in college. Father paid for the college tuition. Son did not finish the year due to drug use. Son then went to rehab and enrolled in a new school while living in a half way house. Vacated for Rule 52 factual findings.

44. *Hill v. Hill*, No. E2021-00399-COA-R3-CV, 2023 WL 3675829 (Tenn. Ct. App. May 26, 2023).

Issue: Valuation of assets, division of marital assets, child support

"Lengthy acrimonious divorce." Final Decree was not entered for 22 months following the trial. On appeal, Husband argued that the delay violated his due process. He cited to TCA 20-9-506 which requires the judgment to be rendered in 60 days and also Tenn. Sup. Court Rule 11 §III(d) which provides that no case may be held under advisement for more than 60 days or final disposition no more than 30 days, absent the most compelling reasons. Husband admitted that these time periods are directory not mandatory. COA held the issue was without merit because Husband took no action to expedite a judicial determination. Husband also took issue with the classification of the marital home. Husband obtained the real property on which the home was built before the marriage as a gift from his parents. The home was under construction when the parties married in 1996. The moved into the home in 1998 and lived there until 2016. The mortgage and HELOC were in both names. Both parties contributed financially to the home. Placing items of personal property into a home does not constitute commingling. However, when unimproved separate property is subsequently improved by construction of a residence using marital funds, commingling can occur. Transmutation, by contrast occurs when separate property is treated in such a way to give evidence of an intention that it becomes marital. Joint ownership creates a presumption that property is marital. This presumption can be overcome with evidence. Factors to determine if real property has been transmuted: (1) the use of the property as the marital residence; (2) the ongoing maintenance and management of the property by both parties; (3) placing the title to the property in joint ownership; and (4) using the credit of the non-owner spouse to improve the property. Affirmed the finding that the marital home was marital property through transmutation. Husband also raised an issue with the valuation of Wife's retirement account. Property should be valued as near as possible to the date of the entry of the order finally dividing the property. Here, the trial court did not assign a value to all of Wife's retirement accounts and therefore, the division was vacated. Further, the final

order did not include an analysis of the statutory factors on property division. Finally, Husband argued that his Mother should have been joined as an indispensable party regarding the cattle. A proper party is not necessarily indispensable for purposes of TRCP 19.01. Only a party who will be directly affected and whose interest is not represented by any other party is indispensable. COA held that Husband and his mother's interests regarding the cattle were aligned and therefore, she was not indispensable.

45. *Huan v. Huan*, No. E2021-01012-COA-R3-CV, 2023 WL 3862776 (Tenn. Ct. App. Jun. 7, 2023).

    Issue: Late filing of notice of appeal, classification of intervenor's transactions as loans, statute of limitations, alimony

    The Parties married in 1992. They had three children. Until 2006, Wife was a stay-at-home mother. Wife worked in her parents' business earning $41,000 a year. Additionally, the business paid for the family health insurance. Wife was 50 years old and had a high school degree. In 2015, Husband (age 49) ceased financially supporting the family and gambled. Trial court found that Husband was able to make more than $100,000 a year. Husband appealed the trial court's award of alimony *in futuro* of $1,250 a month. The trial court awarded Husband the couple's car business and explained that the award of the business would be inequitable without the payment of support. The COA noted this and held that to upset the alimony order would create the net effect of an inequitable division of the marital estate. Husband also raised issues with third parties living with Wife – the parties' youngest child who was 18 and just graduated high school, and their 24 year old (in school) and her boyfriend. Wife testified that this was only temporary to help them out until they go on their feet. COA affirmed the finding that Wife overcame the presumptions regarding these third parties given the temporary nature of the arrangement.

46. *Mikhail v. Mikhail*, No. M2021-00500-COA-R3-CV, 2023 WL 3855285 (Tenn. Ct. App. Jun. 7, 2023).

    Issue: Default divorce as a sanction for Husband's discovery abuses

    Wife and Husband were married for 21 years. Trial court granted default judgment to Wife due to Husband's discovery abuses. Example: Husband refused to appear at his deposition due to Wife's discovery deficiencies. Trial court first held that Husband could not call on any witnesses or enter exhibits, but could cross examine Wife's witnesses. Then trial court granted default judgment. Trial court divided the marital estate evenly. To equalize the division of the marital estate, the trial court ordered Husband to make a one-time payment of $134,113.10. Trial court also awarded Wife $5,000 a month in alimony *in futuro*. COA held it was not an error for the Court to use net equity figures to arrive at a total value and use the same to calculate each parties' shares. Alimony *in futuro* was affirmed.

47. *Bolton v. Bolton*, No. M2022-00627-COA-R3-CV, 2023 WL 3881696 (Tenn. Ct. App. Jun. 8, 2023).

    Issue: Criminal contempt

    Trial court issued an order specifically outlining the criteria that the parties will use in seeking medical treatment. Parents had been taking the child to a medical provider at the end of each parenting time to inspect for abuse. Trial Court ordered that Father was not to take the child to a medical provider except for a "medical emergency." Father argued the order was ambiguous and could not be contempt. When an order allows for more than one interpretation, it must be (a) construed with consideration of the issues it was intended to decide, and (b) be interpreted in light of both the context in which it was entered and the other party of the record, including pleadings, motions, issues before the court and arguments of counsel. COA held it was not too ambiguous for Father's action to be contempt. Criminal contempt willfulness has two elements: (1) intentional conduct; and (2) culpable state of mind. Intentional refers to acting intentionally with respect to the nature of the conduct of the result. Culpable state of mind requires the act to be undertaken for a bad purpose. Willful disobedience for criminal contempt requires that the conduct is done voluntarily and intentionally and with the specific intent to do something the law forbids. While Father might not have undertaken the August 8th visit with bad intent, he clearly displayed a careless disregard to whether he had the right to act. The facts in the record and reasonable inferences that may be drawn are sufficient as a matter of law for a rational trier of fact to find Father guilty.

48. *Sparks v. Sparks*, No. E2022-00586-COA-R3-CV, 2023 WL 4067179 (Tenn. Ct. App. Jun. 20, 2023).

    Issue: Alimony

    Parties married in 2005 and have on child. Husband: UPS driver, has a 401K, health insurance and other benefits, average income $101,144 per year. Wife: hair dresser with no benefits, average income between $40,000 and $50,000. Trial court awarded alimony in future in the amount of $750 per month, but ordered that it increase to $1,250 automatically when the child reaches majority. COA affirmed the decision to award alimony *in futuro*. However, it was unclear from the record that the trial court accounted for child support when it calculated Husband's ability to pay alimony. Further, the COA held that the automatic increase of the alimony in this case was not appropriate. Child was not near the age of majority. A petition to modify would be more appropriate.

49. *Johnson v. Love*, No. W2022-00293-COA-R3-CV, 2023 WL 4234829 (Tenn. Ct. App. Jun. 28, 2023).

    Issue: Order of protection

-Appeal was deemed moot as the Order of Protection expired during the appeal.

50. *Edwards v. Edwards*, No. M2022-00614-COA-R3-CV, 2023 WL 4287203 (Tenn. Ct. App. Jun. 30, 2023).

Issue: Change in permanent parenting plan, Custody

Post divorce petition to modify the parenting plan. The PPP had originally designated set a "Day-to-Day Schedule" and "Summer Schedule" but the parties had mutually agreed to not follow this plan for over sixteen months during the pandemic. Essentially during the pandemic, the parties followed the summer week to week schedule with Mother providing for virtual learning during the day while Father was at work. Father alleged a failure to follow the parenting plan and Mother's proposed relocation as a material change of circumstances. The trial court applauded the parents for working well together and held this was not a failure to follow the plan. Modifying the residential schedule, however, under TCA 36-6-101(a)(2)(C) is a "very low threshold." Two factors are relevant to determine whether there was a material change in circumstance for the purpose of modifying a residential schedule: (1) whether a change has occurred after entry of the order sought to be modified; and (2) whether a change is one that affects the well-being of the child in a meaningful way. The trial court found a material change of circumstances in the parties' agreement to modify the plan for 16 months, the success of the alternative schedule, and Father's willingness to spend as much co-parenting time with the child as possible. COA affirmed. The Court of Appeals stressed that the case should not signal (1) that an agreement to deviate from the PPP will always constitute a material change in circumstances and (2) that a parent risks losing co-parenting time for being cooperative and accommodate another parent's schedule or unpredictable circumstances.

51. *Bumbalough v. Hall*, No. M2022-01003-COA-R3-CV, 2023 WL 4401137 (Tenn. Ct. App. Jul. 7, 2023).

Issue: Child custody

Parentage action. Father designated as the PRP. Mother appeals. Child born in 2016. Parties worked well together sharing virtually equal time after they separated. In 2020, Mother got engaged and her fiancé accepted a job in Texas. Mother sent an email changing the agreement from 50/50 to 7 days a month for Father. Mother moved with the child and only told Father after. Trial court designated Father as the primary residential parent for a child born out of wedlock after finding that this was in the child's best interest based on the child's family relationships and community ties being in Tennessee, where the child was raised. While the trial court recognized that the child had a half-sibling in Texas, other factors weighed in favor of awarding Father primary custody. There is no

authority to support the contention that half siblings have to be placed together. Generally, courts have held that it is not appropriate to separate siblings. But, this presumption must give way if the best interest of the child so dictates. The child was born in TN, raised in TN for several years, had considerable support and connections in TN. Further, the trial court was swayed that Mother would not facilitate a close and continuing relationship with Father, but Father would maintain a relationship with Mother.

52. *Sevigny v. Sevigny*, No. M2022-00953-COA-R3-CV, 2023 WL 4542620 (Tenn. Ct. App. Jul. 14, 2023).

Issue: Criminal Contempt and consent announcement

Wife filed a petition for criminal contempt for Father's failure to apply funds to Child's private school tuition. After a hearing, the parties announced a settlement, but later could not agree on the terms. Husband contended that the matter must be dismissed for double jeopardy. Double jeopardy applies to criminal contempt proceedings. However, in this case, there is no threat of a second prosecution, but only a request for a continuation of the same proceeding. Double jeopardy does not apply. With regard to the consent announcement, the COA explained that the consent of the parties is not required at the time of the entry of the judgment if the parties' agreement existed at the time when the court approved the agreement. For an oral agreement to be enforceable, the parties' prior oral agreement must have been made in open court or in a hearing wherein the fact and terms of the agreement were determined and the terms of the agreement must also be reflected in the record.

53. *Jones v. Jones*, No. M2022-00624-COA-R3-CV, 2023 WL 4559880 (Tenn. Ct. App. Jul. 17, 2023).

Issue: Criminal Contempt, Discretionary Costs, Antenuptial Agreement, discretionary costs

Divorce case. COA held most of the issues were waived due to briefing issues. Husband contended that the trial court erred in denying his motion for discretionary costs. COA explained that parties are not entitled to their discretionary costs simply because they prevail at trial. The trial court's decision may be influenced by the equities of the case. Generally, the court should award discretionary costs to the prevailing party if the costs are reasonable and necessary and if the prevailing party has filed a timely and properly supported motion. The court should: (1) determine whether the requesting party is the prevailing party; (2) limit the award to the costs specifically identified in the rule; (3) determine whether the requested costs are reasonable and necessary; and (4) determine whether the prevailing party has engaged in conduct during the

litigation that warrants depriving it of the discretionary costs to which it might otherwise be entitled. Finally, the COA explained that it was of no effect that the oral ruling did not match the written order. A trial court speaks through its written order, not through oral statements contained in the transcripts. Additionally, an oral ruling, even if considered valid, is interlocutory and subject to revision at any time prior to entry of the judgment adjudicating all claims and the rights and liabilities of all parties.

54. *Hasley v. Lott*, No. M2022-01141-COA-R3-JV, 2023 WL 4633509 (Tenn. Ct. App. Jul. 20, 2023).

    Issue: Permanent Parenting Plan, Custody

    Trial court found that the best interests of the child factors weighed equally between Mother and Father and awarded equal parenting time which each parent designated as a joint primary residential parent. In observing the trial court's findings for the best interest factors, the Court of Appeals found that the preponderance of evidence for Factor One and Factor Five weighed in favor of Mother because Mother performed a majority of parental responsibilities. The Court of Appeals found no abuse of discretion in awarding equal parenting time, but found that because the best interest factors weighed slightly in favor of Mother, then she should be the primary residential parent. Joint primary residential parent designations are not authorized unless the parties agree to this arrangement.

55. *Nolan v. Nolan*, No. W2021-01018-COA-R3-CV, 2023 WL 4559883 (Tenn. Ct. App. Jul. 17, 2023).

    Issue: Criminal Contempt

    Parties divorced and Mother subsequently filed 53 counts of criminal contempt against Father. The trial court fined Father and sentenced him to 83 days in confinement but 53 days were then suspended such that Father only had to serve 30 days. Court of Appeals held that Counts 9, 16, 36, and 40 lacked sufficient evidence. In addition to arguing that the evidence did not support a contempt finding, Father argued that the finding of contempt violated double jeopardy. This petition for criminal contempt was filed after Mother voluntarily dismissed another petition without prejudice based upon an agreement between the parties. Double jeopardy did not apply to the 2nd Petition. In non-jury proceedings, double jeopardy only attaches when the 1st witness is sworn. Entering into a consent agreement to dismiss the 1st petition is not the equivalent of a guilty plea. A guilty plea would have required a plea colloquy in accordance with TN Rules of Criminal Procedure 11(b).

56. *McCurry v. McCurry*, No. E2023-00827-COA-R3-CV, 2023 WL 4760611 (Tenn. Ct. App. Jul. 26, 2023) (per curiam).

    Issue: Pending Criminal Contempt

    Appellant filed appeal for trial court order named "Criminal Contempt Charge and Notice." After Court of Appeals issued a show cause order for lack of a final judgment, Appellant stated that the criminal contempt charges are final and attached trial court order rescheduling trial on contempt charges to October 30, 2023. Court of Appeals dismissed for lack of a final judgment.

57. *Green v. Green*, No. M2021-00955-COA-R3-CV, 2023 WL 4789025 (Tenn. Ct. App. Jul. 27, 2023).

    Issue: Custody, Modification of Parenting Plan

    Mother was initially designated as primary residential parent after parties' divorce. Trial court awarded Father immediate physical custody because Mother had engaged in a pattern of emotional abuse (and physical including intentionally ramming into Father's truck and harassing Father's girlfriend). Afterwards, trial court modified the parenting plan and named Father as primary residential parent based on the best interests of the child factors. The trial court also limited Mother's parenting time based on a material change in circumstances stemming from Mother's emotional abuse.

58. *White v. Miller*, No. M2021-01189-COA-R3-JV, 2023 WL 4853361 (Tenn. Ct. App. Jul. 31 2023)

    Issue: child support – imputing income and retroactive support.

    Neither party appealed the imputation of income to Father based upon a finding of under-employment. However, Mother contended that the trial court should have considered the funds provided to Father by his parents a gift and not a loan. Father had signed a promissory note with the receipt of the funds. Mother also contended the trial court should have considered the full value of Father's investment account. COA found that these were properly considered when making the findings for imputing Father's amorphous income. Trial Court ordered retroactive judgment but did not adhere to the child support guideline amount nor make any findings to explain the deviation. Affirmed the trial court's decision to decline to award Mother attorney fees under TCA 36-5-103(c).

59. *Nelson v. Justice*, No. E2021-01398-COA-R3-JV, 2023 WL 4789024 (Tenn. Ct. App. Jul. 27, 2023).

Issue: Civil Contempt, Abusive Lawsuit, Modification of Visitation and Child Custody, Attorney disqualification.

Trial court disqualified Father's attorney, who Father was married to. Trial court found Father in civil contempt and ordered him to jail, suspended his license, ordered him to surrender his passport, and entered judgment against him for $45,000 for Mother's attorney's fees. Trial court then issued order granting Mother's petition for abusive lawsuit and dismissed Father's petition for modification. Court of Appeals found that the trial court's holding for contempt was flawed because (1) the trial court did not address Father's objections to discovery requests or what discovery requests were incomplete and (2) the trial court's orders were not "clear, specific, and unambiguous" by not outlining what "complete answers" to discovery meant. The Court of Appeals also found that there were differences between Father's 2017 and 2019 petitions, and these differences negated the trial court's finding of abusive lawsuit. Court of Appeals found that trial court abused discretion in disqualifying Father's attorney because there was no objective basis to do so, only pure speculation that they would be a witness. Finally, Court of Appeals found Father's petitions to modify were moot because the child had reached age of majority.

60. *Stark v. Stark*, No. W2021-01288-COA-R3-CV, 2023 WL 5098594 (Tenn. Ct. App. Aug. 9, 2023).

Issue: Criminal contempt

Indirect Contempt. Wife posted on social media that she was a victim of domestic violence and criticized MPD for investigating her Husband, a police officer, on May 9, 2019, after Wife had previously been held in contempt for a nearly identical post since it could affect Husband's reputation and employment. Wife later had an interview with The Commercial Appeal that was published on June 27, 2019 which discusses the party's alleged assault. Husband filed for civil and criminal contempt against Wife, and after Wife asked which actions constituted criminal contempt, the trial court stated that it was from the article published by The Commercial Appeal. The trial court then found that Wife had committed two counts of criminal contempt: one based on the published article and the second based on the social media post. Court of Appeals held that a spouse could be held in criminal contempt for violation of the statutory injunctions. The Court of Appeals reversed on the count based on the social media post, finding that Wife was not provided the requisite notice. A criminal contempt notice must "(A) state the time and place of the hearing; (B) allow the alleged contemnor a reasonable time to prepare a defense; and (C) state the essential facts constituting the criminal contempt charge and describe it as such." Tenn. R. Crim. P. 42(b)(1). Lastly, the trial court erred by ordering Wife to

perform community service because the statute only provided the court to issue a $50 fine and/or imprisonment up to ten days. TCA 29-9-103.

61. *Lowe v. Lowe*, No. E2023-01061-COA-T10B-CV, 2023 WL 5257960 (Tenn. Ct. App. Aug. 16, 2023).

    Issue: Recusal

    Wife filed a motion for recusal with the trial court based on disparate treatment in the parties' final divorce decree but did not attach a required affidavit. Trial court denied the motion because it was not timely filed and did not include an affidavit. Court of Appeals affirmed on the grounds that Wife could not show prejudice or bias from the trial court.

62. *Grande v. Grande*, No E2022-00981-COA-R3-CV (Tenn. Ct. App. Aug. 20, 2023)

    Issues: Civil Contempt

    Husband filed a Post-Divorce Petition for contempt. In March 2021, the trial Court entered a Final Decree of Divorce incorporating the MDA. In September 2021, Husband filed his petition. Wife contended that all of the conduct at issue occurred before the MDA and therefore could not now be brought as contempt. COA explained that "A marital settlement agreement incorporated into a divorce decree can serve as a basis to assert the defense of *res judicata* where the issue was or could have been addressed in the agreement." COA explained that to allow Husband to bring this petition would allow a party dissatisfied with an MDA to revisit settled matters without asserting a claim for fraud or a Rule 60 motion. Husband attempted to raise an allegation of fraud on appeal. COA said that he could not raise fraud for the first time on appeal. Wife also contended she could not be in contempt when taxes were withheld from a life insurance policy cash in in accordance with the MDA. The parties stipulated neither were aware of the tax consequences. No evidence of a provision Wife violated or that she willfully disobeyed an order. Wife also challenged the trial court's provision making her partially responsible for the tax consequences of the life insurance policy awarded to Husband. If a particular marital asset was not addressed in the final judgment of divorce, the court can make a division of that asset at a later date. COA held it was appropriate for the trial court to equitable account for the tax debt. Both parties were partially successful and therefore, there was no prevailing party and no attorney fees.

63. *McCurry v. McCurry*, No.E2022-01037-COA-R3-CV (Tenn. Ct. App. Aug. 16, 2023). (Rule 10 Memorandum Opinion)

    Issue: Custody

    Parties married in 2016. Child born in 2017. The parties separated in 2018 and divorced in 2019. Father was named the PRP "sparking endless litigation from

Mother concerning her interactions with Father and her disbelief in the integrity of the judicial system." Mother filed a petition for emergency protective custody. The Court denied the petition the same day. The same day, Father filed a Petition for Order of Protection. It was ultimately dismissed. Following the denial, the trial court *sua sponte* issued a mutual joint restraining order between the parties. The parties were only allowed to communicate with each other regarding the child and only by text or email, except for emergencies. Denial of Mother's petition affirmed as she failed to allege sufficient facts. Also, affirmed the mutual restraining order as being in the child's best interests.

64. *Hammond v. Hammond*, No. M2022-01253-COA-R3-CV (Tenn. Ct. App. Aug. 22, 2023).

Issue: military retirement

Post-divorce dispute over military retirement, disability, and alimony *in futuro*. In the MDA, Husband was to pay Wife a portion of his military retirement as alimony *in futuro*. The MDA provision was very detailed and calculated the amount to include any reductions for disability. Husband retired in May 2020. On December 31, 2021, he was deemed 100% disabled by the military. Military disability reduces military retirement payments. Discusses *Howell v. Howell* (U.S. Supreme Court), where husband retired and then took disability. The *Howell* trial court ordered the husband to pay the wife the difference between the two. The US Supreme Court said you cannot do that as it is the same as dividing disability, which you cannot do. Issue in this case: may spouses agree contractually to an alimony arrangement requiring alimony *in futuro* in the same amount of the retirement that is waived to receive military disability. The COA held yes, the parties may contractually agree in advance to an alimony requirement in the event of military retirement waiver by the service-member-spouse. Great discussion in this case about military benefits and retirement.

65. Smith v. Smith, No. W2022-00704-COA-R3-CV (Tenn. Ct. App. Aug. 25, 2023).

Issue: property division, contempt, parenting time

Short-term marriage. Trial court determined that the property to which both parties contributed should be divided pro rata and inversely based upon the party's respective incomes. For marital portions of individual accounts, the parties received their respective accounts. Accordingly, Wife received 69% of the marital portions of pre-marital assets. In total, Wife received 37.4% of the marital estate and Husband received 62.6%. The trial court was carefully balancing *Batson v. Batson* (putting parties back to where they were before the marriage in short-term marriages) and *Bates v. Bates* (not equitable to put the parties back to where they were even if short term marriage). Property division affirmed. Parenting plan was vacated. "The ability of the parties to communicate effectively and cooperatively is highly relevant to the determination of a parenting scheduling in line with the child's best interest." The statutory

requirement that the trial court maximize each parent's parenting time, does not mandate equal time. The trial court applied an incorrect legal standard by overly emphasizing the need to maximize parenting time. Finally, double jeopardy barred Wife's appeal of the denial by the trial court of a request to find Husband in criminal contempt.

66. *James v. James*, W2022-00739-COA-R3-CV (Tenn. Ct. App. Aug. 28, 2023).

Issue: Civil contempt and child support

Post-divorce contempt. Father had supervised parenting time but the parties shared joint decision making. Mother changed the child's daycare without discussing it with Father and did not list Father as a contact with the new daycare. Trial court held that Mother's actions violated the requirement for joint decisions on education and held Mother in contempt. COA held enrolling the child in daycare and not providing the daycare with contact information does not violate the Bill of Rights regarding the right to receive educational records or joint decision making on education. Daycare is not an educational provision. It was childcare. Also at issue was an appeal from the divorce referee's ruling on child support. Held, Father did not timely appeal the Divorce Referee's ruling. Local Rule 12(d) provides that appeal runs 10 days from oral or written ruling. Local Rule 12(c) provides that reports of a master, including the divorce referee, shall be made in conformity with Tenn. R. Civ. P. 53.04. Tenn. R. Civ. P. 53.04, appeals run from 10 days after the notice of filing the report. Therefore, appeal ran 10 days from the notice of filing the transcript from the divorce referee.

67. *Reagan v. Reagan*, No. E2023-00499-COA-R3-CV (Tenn. Ct. App. Aug. 31, 2023). (Rule 10 Memorandum Opinion)

Final Order did not contain the signature of both counsel. Tennessee Rule of Civil Procedure Rule 58 requires the signature of all counsel or a certificate of service showing that the order was served on all parties or counsel. Failure to comply with Rule 58 affects the finality of the judgment.

68. *Austin v. Richmond*, No. W2022-00559-COA-R3-JV (Tenn. Ct. App. Aug. 31, 2023).

Issue: contempt, evidence

Mother filed a petition for contempt for failure to pay child support. The trial court adjudicated the issues without conducting an evidentiary hearing. "Allegations in pleadings are not evidence of the facts averred. Unless such facts are admitted or stipulated, they must be proved by documents, affidavits, oral testimony or other competent evidence." Merely attaching a document to a pleading does not place that document in evidence. Vacated and remanded.

69. *Davalos (Dale) v. Dale*, No. E2022-00859-COA-R3-CV (Tenn. Ct. App. Sept. 1, 2023).

    Issue: modification of alimony

    Post-divorce petition to terminate transitional alimony due to co-habitation. Husband ordered to pay $1,000 a month of transitional alimony until Wife 59.5 years old. The order provided that the alimony would terminate if Wife remarries or cohabitates with a third person and could be modified if she has been awarded before she reaches 59.5 years old. Husband alleged that Wife has been cohabitating with her Father and had accessed funds from her retirement account. Only Wife testified at the hearing. Wife testified that her Father quit claimed her some property in New Mexico in exchange for her taking on the litigation regarding irrigation to the ranch. Wife moved to the ranch in December 2020. The ranch had two dwellings – a modular home and a 100-year-old adobe house. Wife's parents lived in the modular home. Wife resided for a time in the adobe house with no electricity or running water. Wife had conveyed her parents a life estate and therefore received no rent. Wife worked as an esthetician and part time yoga instructor. Shortly before trial, she received a license to grow cannabis. She planned to grow 401 plants in her first year. Each plant would yield 1-10 pounds of product at a rate of $1,500 per pound. Also, before trial Wife bought a residence separate from the ranch. Wife also testified that she borrowed from her IRA. COA confirmed that cohabitation need not involve a paramour and the type of relationship with the third-party is irrelevant to whether the cohabitation statute applies. However, it is the living situation *at the time of trial* that must be considered in determining whether the cohabitation statute applies. Further, the remedy is to suspend all or part of the alimony obligation, not to terminate the alimony. The implication is so the recipient can seek reinstatement if the situation justifying suspension ceases to exist. Here, the trial court did not find that Wife was cohabitating at the time of trial and the only proof was that she was not. If the trial court disregarded Wife's testimony of a new residence, it should have explained. The trial court should make findings as to whether the change in residence is genuine and permanent or whether it is a temporary subterfuge. Even if the move is genuine, the paying spouse may be entitled to some relief in the form of suspension from the time of filing until the change of residence. Vacated and remanded for additional findings of fact.

70. *Rushing v. Rushing (Strickland)*, No E2022-01229-COA-R3-CV (Tenn. Ct. App. Sept. 14, 2023).

    Issue: Modification of PRP

    Post-divorce Petition to modify PRP. At the time of the divorce, Father was named the PRP and granted permission to relocate with the minor children (Two girls) to Texas. Mother filed a Petition for contempt and modification. Trial court found both parties equally good parents and capable of parenting, but also held that the children were getting older and their gender waived in favor of Mother.

Higher measure of proof is required when a request to change the PRP is sought. Legislative intent that the gender of the party seeking custody shall not give rise to a resumption of parental fitness or cause a presumption or constitute a factor in favor or against the award of custody to a party. Party seeking to change custody has the burden to show (1) material change of circumstances; and (2) that a change in custody is in the child's best interests. Here the Court found equally balanced. Therefore, it cannot support a material change of circumstances or best interest.

71. *Reese v. Reese*, No. E2022-0116-COA-R3-CV, (Sept. 21, 2023).

Issue: trial procedures, child support

Appeal from a divorce. PPP entered, but child support was blank. Supplemental order purported to bifurcate the issue of child support and transfer the case from Roane County IV-D office to Anderson County IV-D office. Since the issue of child support was never resolved, there is no final order. A PPP that reserves or does not determine child support, leaves no final order. There was nothing in the record to demonstrate that child support services "has relieved the trial court of jurisdiction to determine child support or that Ohio courts have made a determination of child support."

72. *State of TN ex rel. Ananaba v. Ananaba,* No. W2022-00443-COA-R3-CV (Sept. 21, 2023).

Issue: contempt, trial procedures

Mother filed a petition for civil and criminal contempt for unpaid child support. Mother requested an in person hearing. The matter was continued to allow but then on April of 2022, Juvenile Court denied an in person hearing and conducted via zoom. Juvenile Court also ruled that it had the authority to determine whether the petition was civil or criminal, and required Mother to prosecute as civil. Then, the juvenile court found Father willfully in contempt, but refused to punish Father because he made a purge payment. It is for the Petitioner to elect the type of contempt. Further, Father's purge payment would not have absolved him from criminal contempt. By requiring Mother to prosecute as civil contempt, the trial court created a remedy for Father. COA held this was reversible error and vacated. COA ordered that the juvenile court conduct an in person hearing on remand.

73. *Gates v. Switzer*, No. M2021-01552-COA-R3-CV (Tenn. Ct. App. Sept. 27, 2023).

Issue: contempt, appeal procedures

Appeal from divorce and finding of contempt. Court of Appeals found most issues waived for failure to comply with the appellate rules. Finding of contempt affirmed. Finding with regard to transcripts on appeal affirmed.

74. *State of TN ex rel. Andrea Guierrez v, Lane Baggett*, No. M2022-01658-COA-R3-CV (Sept. 28, 2023).

Issue: parenting – decision making

Multiple post-divorce petitions. Mother filed a Petition to Modify the parenting plan to allow her to obtain passports for the children. Mother then filed a motion to allow her to baptize the children. Father filed a Petition to Modify the PPP. Mother filed another petition to modify to have final decision making. The parties had engaged in extensive litigation since their divorce. Father appealed the trial court's award to Mother of sole decision making for medical and religious decisions. TCA 36-6-497(b): The court shall order sole decision making authority when: (1) limitation on parent's decision making is mandated by TCA 36-6-406; (2) both parents are opposed to mutual decision making; or (3) one parent is opposed and such opposition is reasonable. COA affirmed the trial court's award of medical decision making, reviewing the trial court's detailed findings in support. These include Mother was the primary care-giver, Mother attempted to co-parent with Father; the parties lived several hours apart; inability to agree had negatively affected the child. COA vacated finding of religious decision making, finding no evidence to support.

75. *Inman v. Inman*, No.W2022-01056-COA-R3-CV (Tenn. Ct. App. Sept. 28, 2023).

Issue: res judicata

Plaintiff sued Defendant asserting various causes of action related to being misled into believing he was married. Parties had previously filed for divorce. Divorce was dismissed upon a finding that marriage was void. No one appealed. COA affirmed dismissal of this matter finding that Plaintiff's causes of action could have been brought in first lawsuit.

76. *Schanel v. Schanel*, No. M2022-00800-COA-R3-CV (Tenn. Ct. App. Sept. 29,2023).

Issue: Parenting

Very brief marriage. Parties separated when child was two weeks old. Mother names PRP and Father awarded time every other weekend. Trial court applied the correct law and evidence did not preponderate against the findings of fact. Therefore, parenting schedule and PRP was affirmed. Mother contended she should have sole decision making authority. Tenn. Code Ann. 36-6-407(c) provides the factors to consider in deciding decision making: (1) any limitations under 36-6-406; (2) history of participation in decision making; (3)

demonstrated ability and desire to cooperate; (4) geographic proximity to each other. Difficulty in getting along does not automatically rule out joint decision making. Specific issues raised on appeal regarding right of first refusal, telephone calls and contact with a relative. These were affirmed given the proof presented. Father also raised an issue with regard to the limitation in the PPP regarding firearms. Courts may restrict lawful activities that would jeopardize the child's welfare during visitation if there is definite evidence that to permit the right would jeopardize the child. COA found that trial court's decision was based on other cases and the order contained no findings of fact to support the restriction, they deleted the firearm provision. Also, Child support guidelines assume that the PRP will claim the tax exemption for the child, but ultimately the decision is within the discretion of the trial court.

77. *Parker v. Parker,* No. E2022-00720-COA-R3-CV (Tenn. Ct. App. Oct. 12,2023).

Issue: Attorney's Fees

In a post-divorce action, the trial court had initially awarded attorney's fees to the wife, pursuant to Tenn. Code Ann. §36-5-103(c) for her successful defense against the Husband's petition for contempt. The court's attorney fee award was based upon the wife satisfying a provision of the parties' marital dissolution agreement that allowed the husband to retrieve items of personal property from a home awarded to the wife. Upon the husband's motion to alter or amend and following a hearing and supplemental briefing, the trial court concluded that the statute did not provide for attorney's fees in an action involving enforcement of the distribution of property in a divorce. The trial court granted the husband's motion to alter or amend, denying the wife's request for attorney's fees. The Court of Appeals affirmed the trial court and held that Tenn. Code Ann. §36-6-103(c) provides for attorney's fees solely in matters involving alimony, child support, permanent parenting plan provisions, and custody of children.

Statutory Update

- TCA 36-6-701: All judges involved in child custody proceedings shall complete two hours of training on domestic violence per year or 10 hours every 5 years
- TCA 36-3-601: Modified the definition of abuse and added financial abuse.